

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SOKOLOW, et al., : 04-CV-397
:
Plaintiff, : September 11, 2009
:
v. : 500 Pearl Street
:
PALESTINE LIBERATION ORGANIZATION, : New York, New York
:
et al., :
:
Defendants. :
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TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: DAVID J. STRACHMAN, ESQ.

For the Defendant: LAURA FERGUSON, ESQ.

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1 THE COURT: This is Judge Ellis. Can I have your
2 appearances?

3 MR. STRACHMAN: Hi, Judge. David Strachman for the
4 plaintiffs.

5 MS. FERGUSON: Good afternoon. Laura Ferguson and
6 Charles McAleer for the defendants, the PLO and the Palestinian
7 Authority.

8 THE COURT: This is a conference in Sokolow v.
9 Palestine Liberation Organization, 04-CV-0397. It's about 3:03
10 p.m. on September the 11th.

11 The issue that I have listed for the parties is the
12 taking of depositions of parties who had verified information.
13 Whose application is this? Is this an application from --
14 whose application is this?

15 MR. STRACHMAN: The plaintiff's, Your Honor.

16 THE COURT: Could you describe again what these
17 individuals verified so I can make sure I have your position on
18 the record here?

19 MR. STRACHMAN: Certainly, Your Honor. We -- our
20 position is contained entirely in our June 26, 2009 letter and
21 also in a subsequent follow-up letter of July 7th. We sought
22 to depose two officials of the defendants, Mr. Jadalla [Ph.],
23 who is the director general of the Palestinian Authority
24 Finance Ministry, and Yasoo Rabu [Ph.] who is the director
25 general -- secretary general, rather, of the Palestine

1 Liberation Organization. They both signed interrogatories with
2 respect to the jurisdictional discovery on behalf of the two
3 defendants. They verified the answers and their answers are
4 utilized in the defendant's renewed motion to dismiss which is
5 Document 67, and on Document 67 on Pages -- I believe it's 9
6 through 17 there's a series of references to the
7 interrogatories.

8 So instead of or in lieu of filing affidavits
9 attached to the motion to dismiss, the defendants chose to
10 incorporate the interrogatory answers that these two gentlemen
11 swore to in the interrogatory answers. There was questions
12 particularly as laid out in our brief -- excuse me, in our
13 letter of June 26th deal with PLO's DC office, the PLO's PA's
14 New York office and the status of the employees that are in
15 those offices and the activities at the offices.

16 THE COURT: Okay. And you want to depose them to
17 ascertain the basis for their answers?

18 MR. STRACHMAN: Correct.

19 THE COURT: Ms. Ferguson, your objection is what?

20 MS. FERGUSON: Your Honor, our objection is that when
21 the plaintiffs initially served their discovery, their personal
22 jurisdiction discovery they served interrogatories, document
23 requests and then two deposition notices. Those deposition
24 notices were for the heads of the New York and DC office of the
25 PLO during the relevant time period. We provided the

1 interrogatory answers. We provided documents. The plaintiffs
2 withdrew their deposition notices for the former heads of the
3 DC and New York office. The plaintiffs then filed no motion to
4 compel as to our responses to the December 1 discovery. Then
5 subsequently much later they now seek to depose the
6 interrogatory [inaudible]. So without identifying for
7 defendants what they hope to accomplish from this exercise
8 because as to our mind this is going to be a waste of the
9 party's time and a needless expense.

10 The relevance period is January 1998 to 2004 for
11 purposes of the personal jurisdiction discovery. These
12 individuals, Mr. Yasoo Rabu and Masin Jadalla sitting in their
13 office in Ramallah don't remember what phone lines the DC
14 office used or who the landlords were or particular employees.
15 They have no personal knowledge of these things. Instead,
16 documents from that time period were reviewed and those
17 documents have been provided to the plaintiffs. So we don't
18 see that there's any benefit to be gained from everyone
19 traveling over to the Middle East for depositions.

20 THE COURT: Mr. Strachman, it sounds as if what Ms.
21 Ferguson is saying is that you already know the basis for their
22 answers and that's the documents that were reviewed. What's
23 wrong with that? Mr. Strachman?

24 MR. STRACHMAN: Excuse me, Your Honor. We don't know
25 what the basis of their forming opinions for responding to the

1 interrogatories are.

2 THE COURT: It's not --

3 MR. STRACHMAN: We don't know why they came up with
4 the opinions that they did.

5 THE COURT: You have a factual dispute here which I'm
6 not able to quite figure out. Ms. Ferguson says on the one
7 hand that the responses in interrogatories are based on
8 documents that these two individuals reviewed, that they don't
9 have any firsthand knowledge. That seems pretty clear and
10 straightforward. So if they don't have any firsthand knowledge
11 -- first of all, I don't know what the deposition would do.
12 Secondly, if they actually reviewed documents if that's
13 conceded that forms the basis -- you can argue about whether or
14 not the documents in and of themselves is sufficient to sustain
15 the proposition which the defendants seek to sustain.

16 But, Mr. Strachman, you're saying that it's not clear
17 that their knowledge was just based on documents? Can't we
18 just do this by them affirming that that's the only basis of
19 knowledge they have and defendants identifying which documents
20 we're talking about?

21 MR. STRACHMAN: Well, they chose to utilize the
22 opinions of these witnesses or the statements of these
23 witnesses on Pages 9 through 17 of their brief. They didn't
24 simply attach documents. They utilized the characterization of
25 the documents and the status of their employees as contained in

1 the interrogatory responses. So they -- defendants saw fit to
2 not simply rely on documents but to rely on effectively
3 affiants.

4 MS. FERGUSON: The fact that --

5 THE COURT: I understand that but if in fact what Ms.
6 Ferguson says is true and either it's established or it's
7 stipulated to then if the individuals have no personal
8 knowledge and they say they depend on documents it seems to me
9 you need to identify -- she needs to identify which documents
10 they are because you're not -- the deposition isn't going to
11 establish anything except saying look, I looked at Documents
12 100 through 120 and I ascertained that these employees were
13 here or there. So it's not a -- I understand that they
14 characterize it as based upon the affiant but it sounds as if
15 the affiants are just basing it on documents.

16 MS. FERGUSON: If I could say further, Your Honor,
17 that there is no use of the interrogatories for opinions and
18 being very transparent and open about the extent of any
19 jurisdictional presence in the U.S. the defendants have laid
20 out yes, this office had X number of employees; yes, they have
21 the following bank accounts; yes, they [inaudible] engaged in
22 the following speaking activities and here's where that
23 document is. So there's no opinion that's being offered here.
24 But we are, of course, happy to identify particular documents
25 that relate to interrogatory responses.

1 THE COURT: Mr. Strachman, I certainly think you're
2 entitled to look at the basis for the statements that are made
3 but if the individuals are merely conduits for information
4 that's contained in documents it seems to me that under rules
5 of sufficient discovery the -- you took the deposition, they
6 refer you to the documents we'd be back here telling me telling
7 Ms. Ferguson to give you the documents. So as long as I'm
8 satisfied that Ms. Ferguson has ties to the documents and that
9 these individuals don't have any personal knowledge or she'll
10 stipulate they don't have any personal knowledge, I don't see a
11 basis for having their deposition. Indeed, to the extent that
12 they stipulate they don't have any personal knowledge, you may
13 be able to challenge some of the things that they've said on
14 the basis whether or not it's appropriate under the
15 circumstances as a response to your position.

16 So, Ms. Ferguson, to the extent that they're not --
17 even if you think they're identified already --

18 MS. FERGUSON: Yes.

19 THE COURT: I'm going to direct that -- you and Mr.
20 Strachman can discuss this, but for you to identify which
21 documents are responsive to the point that Mr. Strachman thinks
22 that he wants further inquiry on. I gather it has to do with
23 who's working where and which offices and what speeches were
24 given, things like that. That's all ascertained from documents
25 I guess.

1 MS. FERGUSON: Yes. To be clear then I would be
2 providing that information for the interrogatory answers or the
3 statements that were actually incorporated into the motion --
4 the renewed motion to dismiss.

5 THE COURT: Right. Obviously the priority would be
6 what's in the motion although I think just so that we don't
7 have to revisit this if it's clear that the entire
8 interrogatory answers are based on certain documents you might
9 as well give that information to Mr. Strachman but as a
10 priority you should begin with what's in the actual affidavit
11 response.

12 MS. FERGUSON: How should I convey that to him, Your
13 Honor, through a letter or --

14 THE COURT: Well, I think ultimately it has to be put
15 in writing just so that there will be a record of what you
16 said. So a letter is fine although unless you two are having
17 problems with communications I would suggest that you first
18 talk about it and then confirm in writing what you said.

19 MS. FERGUSON: Sure.

20 THE COURT: Is there anything else?

21 MR. STRACHMAN: Just so we're clear, Judge. As I
22 understand it you're going to -- your ruling is that you're
23 denying our request for the depositions but that the documents
24 that support both the positions in -- the referenced positions
25 in the brief and in the interrogatories in general will be

1 identified and sort of correlated to the statements, and I
2 think a letter is sufficient to do that.

3 THE COURT: Yes. Again, I'm taking Ms. Ferguson at
4 her word that these gentlemen don't have any personal knowledge
5 and they glean their responses based upon documents which they
6 reviewed.

7 MR. STRACHMAN: If I could, Judge, maybe they should
8 be the ones then to say the statement in Interrogatory 3, for
9 instance, X, Y, Z, that was based on Documents 1, 2, 3.

10 THE COURT: I thought that's where we were.

11 MR. STRACHMAN: Okay. Right. But I'm just saying
12 maybe it's the affiants who should be attesting to that and not
13 counsel. Maybe that would avoid any issues.

14 MS. FERGUSON: If I'm pointing you to the documents
15 and the documents are supporting what's stated in the
16 interrogatories that seems like an extra step that's
17 unnecessary.

18 THE COURT: Well, I'll put it to you this way. It
19 seems to me that if you have a statement from counsel saying
20 that the individuals have no personal knowledge that's
21 certainly a good starting point. I think -- I don't know
22 what --

23 Ms. Ferguson, you're able to make that statement
24 because you were involved in the process?

25 MS. FERGUSON: Yes. Yes, I was. And also there were

1 interviews with the current individual at the DC office and the
2 New York office who spoke to his recollection of people's
3 positions. So we'll also reference that.

4 THE COURT: Okay. I just wanted to --

5 MS. FERGUSON: Again, that's not something that the
6 affiants had personal knowledge of because they don't recall
7 what happened at the DC office or the New York office back
8 during this time period and plaintiffs chose not to depose the
9 people that were the heads of those offices.

10 MR. STRACHMAN: So then it seems to me what you're
11 saying, Ms. Ferguson, is that the affiants relied in part on
12 the interviews with counsel. So it would -- I don't mean to
13 belabor the point, Judge. My only -- I just think it would be
14 just tidier to simply say that each of the two affiants can say
15 the statement that I made is based on these documents. I don't
16 know if -- I can't believe it's much more complicated or it
17 would involve a lot of extra steps since the defendants have
18 been working fairly closely with these affiants in several
19 cases. These affiants have filed discovery responses and sworn
20 documents in several different cases. So they must be
21 available to them and work with them which I would fully
22 expect.

23 THE COURT: I'll put it to you this way. Your point
24 is well taken although I think as an initial matter what we
25 should do is we should work toward getting the answers to the

1 questions --

2 MS. FERGUSON: Right.

3 THE COURT: I think, Ms. Ferguson. ultimately since
4 they are the affiants that are being addressed they'll need to
5 confirm whatever information you can convey to Mr. Strachman,
6 that is that either by saying that the information that I've
7 reviewed what Ms. Ferguson sent and that is true or otherwise
8 indicating that what they did in their affidavits was not based
9 on personal knowledge and based on the documents which you
10 conveyed to Mr. Strachman.

11 I mean he's right that as a cleaner matter the person
12 who made the affidavit is the one who should specify what it is
13 that they relied on so that there won't be any question. I'm
14 not as -- in a grand scheme of things I'm not as concerned
15 about it from that point of view because I would hold you
16 responsible but since it's not just my case I think as a -- and
17 presenting it to the District Judge it ought to be a little
18 neater than that. Do you understand what I'm saying?

19 MS. FERGUSON: Yes. That's fine, Your Honor.

20 THE COURT: So they'll have to at some point confirm
21 whatever you convey to Mr. Strachman and I trust that it won't
22 linger on for too long. But I want to expedite things so I'm
23 sure you can provide the information and maybe you can provide
24 an affidavit from them in short order too but I don't think it
25 needs to be held up while that happens.

1 MS. FERGUSON: The first step will be to get the
2 information to Mr. Strachman and then we'll take it from there.
3 It is over the next week the highest of the Ramadan holidays.
4 It will be difficult to get a declaration in the next week.

5 THE COURT: All right. I'll leave you with only this
6 word, that is that when I get representations from attorneys
7 about what's going to be the facts I hope they turn out to be
8 that way because it gets messy after that.

9 MS. FERGUSON: I understand, Your Honor.

10 THE COURT: Based upon the facts presented to me, I
11 assume that Ms. Ferguson will convey the information to Mr.
12 Strachman. It will be their -- they will have to verify by the
13 actual affiant, that this will be done as quickly as possible
14 in the manner to expedite Mr. Strachman getting the information
15 but that ultimately we will have individuals with direct
16 knowledge of the affidavits on record.

17 If there's nothing further, Counsel --

18 MR. STRACHMAN: No, Your Honor. Just will the Court
19 then be issuing some sort of order to this effect just -- are
20 we on the record in --

21 THE COURT: We are being recorded.

22 MR. STRACHMAN: Okay.

23 THE COURT: And my clerk is also taking notes. Of
24 course the parties understand that this is binding. I trust
25 that -- this one is actually pretty clear. So I don't think

1 there's any subjectivity involved in it. So we'll have my
2 recollection, my law clerk's notes and the back-up recording.
3 That will hopefully resolve any disputes that the parties have
4 going forward.

5 Anything else?

6 MR. STRACHMAN: That's all, Your Honor.

7 MS. FERGUSON: No, Your Honor.

8 THE COURT: Thank you very much. We're adjourned.

9 MR. STRACHMAN: Thank you very much.

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

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7 Shari Riemer

8 Dated: September 17, 2009
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